amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: July 5, 1996.

William Rice,

Acting, Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by modifying paragraph (c)(86) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(86) A revision to the Missouri SIP to revise the Missouri Part D new source review rules, update and add numerous definitions, revise the maximum allowable increase for particulate matter under the requirements for prevention of significant deterioration, address emission statements under Title I of the CAA, and generally enhance the SIP.

(i) Incorporation by reference.

(A) Revision to rules 10 CSR 10–6.020, Definitions and Common Reference Tables, effective August 30, 1995; 10 CSR 10–6.060, Construction Permits Required, effective August 30, 1995; 10 CSR 10–6.110, Submission of Emission Data, Emission Fees, and Process Information, except section 5, effective May 9, 1994; and 10 CSR 10–6.210, Confidential Information, effective May 9, 1994.

* * * * * *

[FR Doc. 96–19200 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[TN–96–01; TN–MEMP–96–01; FRL–5542–4]

Clean Air Act Final Interim Approval of Operating Permits Programs; State of Tennessee and Memphis-Shelby County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permit programs submitted by the State of Tennessee on behalf of the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department for the purpose of complying with Federal requirements which mandate that authorized permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

EFFECTIVE DATE: August 28, 1996.

ADDRESSES: Copies of the State of Tennessee and the Memphis-Shelby County submittals and the other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA 30365. Interested persons wanting to examine these documents, contained in EPA dockets numbered TN–96–01 and TN–MEMP–96–01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Kelly Fortin, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–3555, Ext. 4223.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'') and the implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that permitting authorities develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the program submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials.

EPA received the State of Tennessee's (''the State'') title V operating permit program submittal on November 10, 1994. The State requested, under the signature of the Tennessee Governor's designee, approval of its operating permit program with full authority to administer the program in ninety-one of the State's ninety-five counties. Four of the State's counties (Shelby, Davidson, Hamilton, and Knox) are regulated by local air pollution control agencies operating under certificates of exemption issued pursuant to Tennessee Code Annotated (T.C.A.) Section 68–201–115. The State's jurisdiction also does not extend to sources of air pollution over which an Indian Tribe has jurisdiction. The State of Tennessee supplemented its initial title V program submittal on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, February 13, 1996, April 9, 1996, June 4, 1996, June 12, 1996, July 3, 1996, and July 15, 1996. Because the August 8, 1995 supplement materially changed the State's title V program submittal, EPA extended the one-year review period.

On June 26, 1995, EPA received the Memphis-Shelby County (''the County'') title V operating permit program submittal. The State requested, under the signature of the Tennessee Governor's designee, approval of the County's program on behalf of the Memphis-Shelby County Health Department. The Memphis-Shelby County Health Department has authority to administer the operating permit program in all areas of Shelby County, Tennessee, including the incorporated municipalities of Arlington, Bartlett, Collierville, Germantown, Lakeland, Memphis, and Millington. The County's jurisdiction does not extend to sources of air pollution over which an Indian Tribe has jurisdiction. The County supplemented its initial program on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, February 14, 1996, March 5, 1996, and April 10, 1996.

EPA reviews title V operating permit programs pursuant to section 502 of the

Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permit program for that State or local agency.

On March 11, 1996, EPA proposed interim approval of the State of Tennessee and Memphis-Shelby County title V operating permit programs. *See* 61 FR 9661. The March 11, 1996 notice also proposed approval of the State and County interim mechanisms for implementing section 112(g) and for delegation of section 112 standards and programs that are unchanged from the Federal rules as promulgated. Public comment was solicited on these proposed actions. EPA's detailed response to the comments is contained in the Response to Comment Document, which can be found in the dockets at the address given above. In this document, EPA is taking final action to promulgate interim approval of the State of Tennessee and Memphis-Shelby County operating permit programs.

II. Final Action and Implications

A. Analysis of Approval Action and Response to Public Comments

On March 11, 1996, EPA proposed interim approval of the State of Tennessee and Memphis-Shelby County title V operating permit programs. *See* 61 FR 9661. The program elements receiving approval in this action are unchanged from those discussed in the proposal notice and continue to substantially meet the requirements of title V and part 70. For detailed information on EPA's analysis of the State and County program submittals, please refer to the Federal Register notice cited above and to the technical support documents (TSD) contained in the dockets at the address noted above.

EPA received seven letters during the 30-day public comment period held on the proposed interim approval of the State and County programs. Comments were received from the following agencies, companies and firms: TENNECO Packing; the Tennessee Department of Environment and Conservation; the Department of Energy, Oak Ridge Operations Office; Eastman Chemical Company; the Memphis Shelby County Health Department; the Tennessee Association of Business; and Tuke Yopp & Sweeney, Attorneys.

All of the comments received during the public comment period were reviewed and considered by EPA prior to taking this final action. The original comment letters can be found in the dockets for this action, which are available at the address given above. EPA's response to the comments can be found in the Response to Comment Document, which is part of the dockets. In response to the comments, a few of the conditions for full program approval discussed in the proposal notice are being clarified or revised and are discussed below.

Both the State and County addressed each of EPA's nine proposed interim approval issues in their comment letters and in most cases provided proposed language changes to address the interim approval issue and/or a commitment to adopt the necessary changes. EPA appreciates the State's and County's responses on these issues and will continue to work with these agencies to facilitate the adoption of regulatory changes necessary for full approval.

1. Certification of Compliance With Applicable Requirements

Pursuant to 40 CFR 70.5(c)(9), a certification of compliance is a binding, regulatory requirement upon a source subject to title V. While the State's and County's application forms require a certification of compliance, the regulatory provisions of both programs do not specifically require the permit application to contain a compliance certification. As a condition of full approval, EPA requested that the State and County clarify in supplemental legal opinions that a source submitting an application for a title V permit is legally obligated to certify its compliance status with regards to all applicable requirements. Alternatively, the State and County could revise their regulations to directly incorporate this requirement.

On April 9, 1996, the State submitted to EPA, as part of the State's response to EPA's proposal notice, a legal opinion supporting the State's operating permit application-based compliance certification approach as a method resulting in a binding, legally enforceable compliance certification. As such, EPA is removing the proposed interim approval issue regarding compliance certification for the State of Tennessee.

This interim approval issue remains unchanged for Shelby County. The County indicated in their comment letter, dated April 10, 1996, that the County would develop a opinion letter on this issue and that they expect a conclusion similar to that of the State would be reached.

2. Insignificant Activities

In the March 11, 1996 proposed interim approval notice, EPA discussed interim approval issues related to the State and County ''exemptions'' rule, 1200–3–9–.04, that was included in the initial State and County title V program submittals. Until recently, EPA was unaware that when the State and County supplemented rule 1200–3–9–.04, in August of 1995, with a new subparagraph 1200–3–9–.04(5), entitled ''Major Source Operating Permits Insignificant Emission Units,'' that the original subparagraphs 1200–3–9.04(1)–.04(4) were revised to exclude their applicability to the State and County title V programs. Because these paragraphs are no longer applicable to the State and County title V programs and are no longer State effective rules, EPA is withdrawing those interim approval issues related to subparagraphs 1200–3–9–.04(1)–(4).

EPA received several comments regarding the proposal to list certain aspects of the State's insignificant activities rule as grounds for interim approval. These comments addressed the ''gatekeeper'' issues regarding the structure of the State's exemptions, the list of exempted activities, and the State's exemptions from permit revision procedures.

Regarding permit revision procedures, EPA proposed to require the State and County to eliminate the provisions in subparagraph 1200–3–9–.04(5)(h) which would exempt insignificant activities from permit revision procedures. One commenter asserted that this exemption is appropriate in light of recent revisions that EPA has proposed to part 70, and that it is therefore premature for the State to change its rules until changes to part 70 are finalized. EPA does not agree that this provision of the State's rules finds support in recent proposed revisions to part 70, since that proposal does not contemplate outright exemptions from the need for a permit revision for changes that trigger applicable requirements. However, EPA has stated elsewhere that it shares concerns regarding the need for separate rulemakings to address interim approval deficiencies and changes to part 70. As stated in a memorandum issued June 13, 1996, EPA plans to allow for the granting of extensions for interim approval periods so that these rulemakings can be combined. If this occurs, the State and County should be able to combine rulemakings as it requested.

Regarding the list of insignificant activities in the State's rules, EPA proposed that the State and County must either demonstrate that exclusion from applications of activities on the list would not interfere with the determination or imposition of applicable requirements, or else impose an emissions cap on the activities that would be eligible for exclusion. One commenter asserted that EPA should not require such a demonstration, since the State's rule has the appropriate ''gatekeeper'' providing that activities may not be excluded from the application if they are subject to an applicable requirement. The commenter pointed out that, since the effect of this gatekeeper is that sources will always have to make the determination that a listed activity is in fact not subject to applicable requirements, it is inappropriate to require the State to make a demonstration of non-applicability at the program approval stage.

EPA agrees that the gatekeeper language in 70.5(c), to the extent it is reflected in the State's rule, should function in this manner. Notwithstanding the existence of an insignificant activities list, a source remains obliged to submit an application that properly accounts for all applicable requirements, even where units subject to requirements can be found on the list.[1] Given that applicable requirements may change, this will to some extent always be a situation-specific exercise, and EPA does not believe it appropriate to require States to show at program approval that conflicts between applicable requirements and activities listed as insignificant could never arise. At the same time, however, EPA believes that insignificant activities lists should avoid the potential for confusion created when an activity that is plainly subject to an applicable requirement is included. In the TSD for the proposed approval, EPA noted instances where it believes such a conflict exists, and other instances where the listed activities are so vaguely described that conflicts with applicable requirements appear likely. EPA believes that where problems such as these can be identified at the time of program approval, their correction should be a condition for receiving full approval.

There is more than one way to remedy this deficiency. As suggested in the proposal, the State may be able to retain its activities list as is, but demonstrate that the listed items (at least those about which EPA is concerned) do not in fact conflict with applicable requirements. Preliminarily, EPA believes such a demonstration would have to account for the size of these activities in terms of potential emissions. One commenter pointed out that such a demonstration would be burdensome, and that the applicability of requirements frequently does not depend on size of the emissions unit. EPA does not rule out that such a demonstration might be made in a manner that does not quantify emissions. Whether this is possible will depend on the activity and the applicable requirements potentially implicated. EPA is willing to work with the State to arrive at a satisfactory method for such demonstrations.

Another alternative proposed by EPA was that the State could impose an emissions cap on the listed activities. In response to the comment that the applicability of requirements does not necessarily depend on the potential emissions, EPA notes that this is a valid point, and one which underscores the need for appropriate gatekeeper language that obliges the source to make a determination of applicability notwithstanding the listing of an activity by the State as insignificant, or, for that matter, the use of a generic insignificant activities threshold like that found in § 1200–3–9–.04(5)(a)(4)(i). Again, EPA's main objection to activities on the State's list were that several appeared on their face to implicate applicable requirements. EPA believes a reasonable approach for limiting the confusion that could result from this situation is to impose an emissions cap which, in combination with the appropriate gatekeeper language, would help ensure that applicable requirements are accounted for in the application and permit. Again, EPA is not mandating this as the only acceptable approach to resolving problems it perceives with the existing list.

EPA's proposal for a quantification of emissions from the State, and the alternative for a tons per year cap, was not solely due to a concern over conflicts with applicable requirements, but also encompassed a concern that some of the listed activities could be quite large, possibly approaching major source levels. EPA is maintaining its position that the State must demonstrate that very large activities are not being listed as insignificant. Here again, EPA is willing to work with the State to narrow the group of activities for which an emissions quantification would be necessary.

The final insignificant activities issue concerns the State's exemption from monitoring, recordkeeping, reporting, and compliance certification requirements for insignificant activities that are subject only to generic SIP requirements. EPA proposed that the State must remove this exemption in order to receive full approval. Commenters objected to this condition, asserting, first, that this condition was inconsistent with guidance issued by EPA, second, that the State rules did not create an exemption but instead were designed to meet these part 70 requirements, and third, that elimination of this exemption would create an unreasonable permitting burden.

The commenters are correct that EPA's guidance entitled ''White Paper #2'' does specifically address the issue of how title V permits may be written with regard to insignificant activities subject to generally applicable SIP requirements.[2] Briefly summarized, the guidance states that it is within the permitting authority's discretion to decide that no additional monitoring (beyond that provided in the applicable requirement itself) will be required in the title V permit for insignificant activities subject to generally applicable requirements, if there is little or no likelihood that a violation could occur from those activities. [3] However, this is in part a factual finding, and so White Paper #2 contemplates that this discretion would be exercised on a permit by permit basis, where the finding can be reviewed in a context that is specific enough to be meaningful. EPA does not rule out that a State might structure an insignificant activities list narrowly enough that such a finding could be made programmatically, thereby allowing for a categorical exemption from part 70 monitoring, recordkeeping, and reporting. However, EPA does not find this to be the case for the current Tennessee insignificant activities provisions.

EPA thinks that more often than not it will be the case that part 70 monitoring, recordkeeping, and reporting requirements will not be

[1] As EPA explained in its first ''White Paper'' guidance, this obligation to account for all applicable requirements in the application does not necessarily entail a description of every emissions unit that is subject. The more ''generic'' the requirement, the less need there is for a detailed description of the subject emissions units. For further explanation, see the White Paper guidance on streamlined treatment of applications.

[2] ''Generally applicable requirements'' are those that apply universally to all emissions units and activities, as opposed to requirements that focus on a category of units or activities.

[3] If no monitoring is required, it would follow that the permit can also dispense with recordkeeping and reporting for those units, since there is no compliance data being regularly generated.

necessary where the State's insignificant activities are subject only to generally applicable requirements. Therefore, Tennessee and Shelby County may address this interim approval condition by modifying the exemption from these requirements to a regulatory presumption that the monitoring, recordkeeping, and reporting requirements will not apply in those instances, but leaving the State with the authority to prescribe those requirements as needed on a permit by permit basis.

White Paper #2 does not suggest that activities subject to applicable requirements may be exempted from compliance certification, even on a permit by permit basis. To the contrary, White Paper #2 discusses a streamlined way in which compliance certifications may be made for these types of activities.

Industry commenters and the State assert that the provisions being discussed here do not create an exemption from compliance certification, but rather meet it by requiring a certification of compliance to accompany applications for initial permit issuance, revision, or renewal. EPA disagrees. Both title V and part 70 (at § 70.6(c)(5)(i)) require certification of compliance to be performed at least annually. The commenters fail to explain how a certification of compliance which could be as infrequent as once every five years meets this requirement.

EPA also disagrees with the view, strongly asserted by State and industry commenters, that title V permitting will be unreasonably burdensome if an exemption of the sort currently contained in Tennessee's rules is not allowed. The commenters may have been under the impression that a strict monitoring, recordkeeping, and compliance regime would be needed for each insignificant activity subject to a generally applicable requirement. However, EPA has clarified in White Paper #2 that part 70 does not mandate this result.

Part 70 does require sources to certify compliance at least annually with all applicable requirements, even as they apply to smaller activities subject to generally applicable requirements. However, EPA fails to see how an additional burden is created when a source must certify compliance with a requirement that it would be legally obligated to comply with even in the absence of title V. A burden would result only if, as a result of part 70, sources were required to expend additional effort to determine compliance. As White Paper #2 explains, if no additional compliance data is being generated, then the source is not expending any additional effort to determine compliance, and the compliance certification will be based on available information. The commenters did not suggest anything to counter this reasoning.

Since EPA proposed interim approval, the Ninth Circuit Court of Appeals has decided a case addressing this same issue. *Western States Petroleum Association* v. *EPA,* No. 95–70034 (June 17, 1996) (''*WSPA*''). Because of the similarities between that case and this action, EPA believes it appropriate to address here how it plans to respond to that decision. EPA wishes to emphasize that the *WSPA* decision is very recent, and that EPA is still in the process of developing a more thorough response that addresses other title V programs. However, given the State's desire to avoid imposition of the Federal Part 71 operating permits program, EPA decided it is in the State's best interest not to delay approval until a more thorough response could be articulated.

The *WSPA* case concerned EPA's approval of the Washington State program, which also contained an exemption from permit content requirements for insignificant activities subject to generic SIP requirements. Industry petitioners challenged EPA's identification of this exemption as grounds for interim approval, asserting that such an exemption was allowed by part 70, and that EPA had acted inconsistently by approving other title V programs with similar provisions. The 9th Circuit did not opine on whether EPA's position was consistent with part 70. It did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent that it perceived in the Washington approval.

EPA accepts the broader holding of the *WSPA* decision, namely, that it should act consistently in its program approvals or else explain any departures. However, EPA does not necessarily agree with the specific findings of the Court regarding inconsistent actions in other State programs. Nor does EPA necessarily agree that the Washington interim approval constituted a departure from the precedent established generally in the title V program approvals nationwide. Just as importantly, EPA maintains that part 70 does not allow for outright exemptions from permit content requirements for activities subject to applicable requirements. EPA therefore plans to respond to the *WSPA* decision by determining exactly where inconsistencies may exist among title V programs and by addressing these programs as necessary to arrive at a nationally consistent approach in harmony with the part 70 rule.

The *WSPA* court found that EPA had acted to approve title V programs with exemptions from permit content requirements in eight instances. EPA at this time does not necessarily agree with the Court's finding that each of these eight programs represents an inconsistency. In some cases, the Court based its conclusion on language in the State rules or in EPA's approval notice that was merely ambiguous or imprecise. EPA is now in the process of investigating whether these programs present true inconsistencies. EPA expects that in some cases this will be answered from the plain meaning of the State's regulations. Where the State regulations at issue are ambiguous, EPA will seek confirmation from the States themselves as to how these regulations have been interpreted.

EPA's investigation, though still in the early stages, has revealed that of the eight States identified by the 9th Circuit as subject to inconsistent treatment by EPA, three can be eliminated from this list based on the language of the State rules alone. The North Dakota program regulations contain no exemption from permit content requirements for activities subject to applicable requirements, and so EPA's statement in the approval notice, read by the Court as suggesting otherwise, appears to have been merely an imprecise statement of the effect of the State's insignificant activity provisions. Similarly, since the Knox County, Tennessee, rules exempt insignificant activities from permit applications but not permit content, EPA's statements in that approval notice appear likewise overbroad.

The Massachusetts program does, in fact, exempt certain listed insignificant activities as exempt from title V permitting altogether. In analyzing this provision under its Part 70 regulations, EPA assessed each of the listed activities and determined that they either named activities that are not subject to applicable requirements, or that any applicable requirement implicated by the activity was not designed to be implemented by addressing emission units in the permit (i.e., open burning). EPA has reexamined this assumption, and continues to believe it is accurate.

The Florida program regulations also appear to exempt insignificant activities from title V permitting. The Court concluded that EPA had not identified this provision as grounds for interim approval. EPA does not necessarily agree. In EPA's view, in order to remedy

the deficiencies identified by EPA in the Florida interim approval notice, which included the State's failure to include gatekeeper language that assured the completeness of permit applications, the State would necessarily have to address the exemption created from permit content requirements. It follows that, to the extent Florida's regulations can be read as creating an exemption from permit content, this should also be considered grounds for interim approval. EPA has yet to reach a tentative conclusion regarding Ohio, Hawaii, North Carolina, or Jefferson County, KY, all identified by the Court as inconsistent with EPA's action in Washington State. EPA is including a somewhat more detailed explanation of the preceding points in the Response to Comments document for this action.

The *WSPA* opinion states that:

> The EPA may not depart, sub silentio, from its usual rules of decision to reach a different, unexplained result in a single case * * * To the contrary, the EPA must clearly set forth the ground for its departure from *prior norms* so that we may understand the basis of the EPA's action and judge the consistency of that action with EPA's mandate. Slip Op., at 6990 (emphasis added).

EPA reads this to mean that a regulatory interpretation proffered by the Agency is not entitled to judicial deference if it conflicts with the de facto policy established through the Agency's actions on specific programs. That is, if the ''norms'' established through program approvals are other than the Agency's articulated policy, courts will not uphold the Agency's efforts to impose the latter.

EPA acknowledges that its investigation may reveal a small number of inconsistencies on this issue among approved title V programs. However, EPA believes that these inconsistencies, even when construed liberally and aggregated together, still would represent a relatively minor set of deviations from the normal policy manifested in the vast majority of title V program approvals.

The Court in *WSPA* appeared to base its specific holding of inconsistency on its assumption that EPA had approved eight programs with exemptions from permit content, but had acted to impose the policy against permit content exemptions in only two instances.[4] This assumption is incorrect. At the time the Washington State program received interim approval, EPA had approved 22 State and 39 local programs, and had proposed approval of another 13 State and 13 local programs. As of today, EPA has approved 38 State and 55 local programs, and has proposed approval of another seven State and four local programs.[5] Each program submitted to EPA necessarily addresses this issue (though most do so simply by providing for permit content language consistent with part 70—that is, by not affirmatively establishing any permit content exemption). Of 104 title V programs approved or in the process of approval, EPA believes that there are at most four with regulations that present inconsistencies on this issue.

EPA believes it is clear from these totals that its ''prior norm'' has been to grant full approval only where activities subject to applicable requirements are not exempted from the permit, and that its interpretation of part 70, as manifested both in its articulated policy and in actual program approvals, is consistent with the position being taken in today's action. In those few instances where inconsistencies are confirmed to exist, EPA plans to take appropriate action to follow the *WSPA* Court's mandate that it act consistently or explain any departures.

3. Applicable Federal Requirements

Subparagraph 1200–3–9–.02(11)(b) in the State and County programs restricts the domain of applicable Federal requirements referenced in Paragraph 1200–3–9–.02(11) to those in effect on December 15, 1993. As a result, neither program ensures that title V permits will address all applicable requirements in accordance with 40 CFR 70.6(a). As specified in the proposal notice, subparagraph 1200–3–9–.02(11)(b) of the State and County regulations must be revised so that the definition of applicable requirements is consistent with part 70. The State and County regulations must provide that all applicable requirements, as defined in 40 CFR 70.2 and as provided generally in the Clean Air Act and part 70, are included in the permit such that they can be implemented and enforced by the State and County.

EPA received several comments on this interim approval issue, and hence we believe further clarification is necessary. Several commenters, including the State and County, concurred that the indicated change was necessary for the program to meet the requirements of part 70. However, one commenter stated that the regulation could not be revised because the State has specific requirements that Federal regulations cannot be adopted by reference to the Federal rule citation and because all new Federal requirements must be adopted by the Tennessee Air Pollution Control Board before becoming State effective. Another commenter indicated that new Federal standards that have not yet been adopted into State regulation and delegated to the State for implementation are Federally enforceable but not State enforceable unless the source has signed a mutual agreement letter giving the State enforcement authority.

The commenters' statements are likely correct for new Federal requirements that have not been adopted by the State and have not been incorporated into a title V permit. Many State laws require that Federal requirements be adopted by the State prior to implementation and enforcement or may prevent incorporation by reference. Such requirements are generally intended to provide the public and regulated community with adequate notice of the new requirements and to allow the State and regulated sources access to the State court system for enforcement and appeals. However, the title V permitting program also provides a mechanism for new Federal requirements to be implemented and enforced by a State or local agency. In fact, one of the goals of title V is to consolidate all of the various air pollution control requirements that a source is subject to into one document that can be enforced by the designated State or local air pollution control agency.

EPA would like to clarify that, although title V requires that applicable requirements be enforceable as a matter of State law, it does not require that they be adopted by the State or municipality through rulemaking prior to incorporation into a title V permit. State's generally have broad legal authority to incorporate permit conditions into properly issued State (or local) permits. The public notice and comment procedures, required by the title V permitting programs, provide the mechanism to ensure that the permit terms are necessary and reasonable; these procedures are in a sense analogous to the notice and comment rulemaking procedures under State law, to which the commenter alluded. In States with this broad authority, any permit term or applicable requirement incorporated into a valid title V permit can be enforced by the permitting agency. In any case, correction of the applicable requirements definition to eliminate the cutoff date will not constitute the adoption into State law of any additional requirements. That adoption will only occur in a separate

[4] ''[T]he EPA has identified only two Title V programs that in fact apply permitting requirements to IEU's * * *.'' Slip Op., at 6988.

[5] Altogether, 116 State and local agencies will have title V programs.

process, either rulemaking or permit issuance, that should afford whatever level of process is due.

In an opinion submitted to EPA, in support of the State's title V program, the Tennessee Attorney General indicated that the State of Tennessee has broad legal authority to incorporate all applicable Federal requirements, as defined by part 70, into the title V permit and to enforce those requirements. In a letter to EPA, dated June 12, 1996, the State reaffirmed that the State does indeed have such authority and that during the interim approval period and until the necessary changes are made to the State regulations, the State will use such authority to include all applicable Federal requirements in the title V permit and to enforce those requirements.

4. Implementation of Section 112(g) During Transition Period

As discussed in the proposal notice, on February 14, 1995, EPA issued an interpretive notice which outlines the Agency's revised interpretation of section 112(g) applicability (60 FR 8333). The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow permitting authorities time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking.

Unless and until EPA provides for an additional postponement of the section 112(g) effective date, the State of Tennessee and Memphis-Shelby County must have Federally enforceable mechanisms for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State and County regulations. Both program submittals contain Chapter 1200–3–31 entitled ''Case by Case Determinations of Hazardous Air Pollutant Control Requirements'', which will serve as an adequate implementation vehicle during the transition period.

The proposal notice also discussed that Chapter 1200–3–31 contains several discrepancies with respect to the provisions of section 112(g) of the Act. EPA proposed that as a condition of full title V program approval, the State and the County must correct the identified discrepancies. Several commenters indicated that, while they agreed that these changes would likely be necessary for approval of the State's and County's 112(g) programs, it is premature to condition the title V program approvals on these changes. EPA concurs with the commenters and is removing the proposed interim approval issues regarding the 112(g) transition period.

EPA is approving the use of the State of Tennessee and Memphis-Shelby County Chapter 1200–3–31 as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by the State and County of rules specifically designed to implement section 112(g). This action does not approve Chapter 1200–3–31, in general, for purposes of 112(g), nor does it imply that Chapter 112(g) will be consistent with the final Federal 112(g) rule, when it is promulgated. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State and the County to adopt regulations consistent with the Federal requirements. This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State or local regulations are adopted.

5. Conflict of Interest

The Clean Air Act requires that States implementing and enforcing permitting programs approved pursuant to the Act must adopt requirements regarding conflict of interest that are at least as stringent as those set forth in the Act. CAA 128(a)(1)–(2), 129(e). State law must provide that no State board or body that approves operating permits, either in the first instance or upon appeal, shall be constituted of less than a majority of members who represent the public interest and who do not derive a significant portion of their income from persons subject to operating permits. State law must also provide that any potential conflicts of interest by members of such board or body or the head of any executive agency with similar powers be adequately disclosed. Pursuant to section 129(e) of the Act and section 70.4(b)(3)(iv) of the Federal operating permit regulation, State law must also provide that no permit for a solid waste incinerator unit may be issued by an agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

In the State of Tennessee Attorney General's opinion that was submitted to EPA as part of the State's application for the title V program, and in a subsequent letter, dated September 29, 1994, the State made a commitment to submit a Board adopted rule that would satisfy the provisions of sections 128 and 129(e) of the Act to the Tennessee Attorney General for approval no later than March 30, 1995. In responding to a public comment addressing conflict of interest, it was brought to EPA's attention that the State conflict of interest rules are not yet State effective. While the necessary regulations were reviewed by EPA and adopted by the Board in April 1995, the rules have not yet been signed by the State Attorney General. The State has indicated to EPA that they expect such regulations to be made State effective in the near term. Hence, as a condition of full approval, the State must complete the adoption procedure and submit to EPA regulations that satisfy the provisions of section 128 and 129(e) of the Act.

6. Third Party Standing

One commenter raised the issue of whether the State's title V program met the program approval requirements for standing, as outlined in Section 502(b)(6) of the Clean Air Act, 42 U.S.C. 7661a(b)(6). Standing is a critical component of the title V program. The United States Court of Appeals for the Fourth Circuit recently held, in the title V context, that States at a minimum, must extend judicial review rights to participants in the State public comment process who satisfy the standards for standing for the purposes of Article III of the U.S. Constitution. *Commonwealth of Virginia* v. *Browner,* 1996 U.S. App. LEXIS 5334, *23 (March 26, 1996).

In the commenter's opinion, the Tennessee Air Pollution Control Board's (''the Board'') relatively recent decision in *In the Matter of Bayou Steel Corporation* (*Tennessee*), Division of Air Pollution Control Case No. 95–0132, Docket No. 04.09–45–10788A (October 2, 1995), holds that the Board will require a party to demonstrate that the party had suffered an actual injury before it could ''appeal'' a permit to the Board, thereby effectively preventing third party ''appeals'' for permit actions.

In response to the comment, EPA re-examined the State Attorney General's opinion submitted with the State's title V program. In addition, in a letter to the State dated May 22, 1996, EPA requested further clarification of the State law and interpretation of the State's standing requirements. The State's response to EPA's inquiries, dated June 4, 1996 and July 3, 1996, clarified the State's position on standing. These letters are available for public review in the dockets for this

action. In brief, the State made clear that the law of standing in Tennessee does anticipate situations where there is a threatened injury. Based on the State's responses to EPA's inquiries and the State Attorney General's opinion, EPA continues to believe that the State of Tennessee meets the title V requirements for standing. This analysis does not reflect an opinion on the State's *Bayou Steel* case.

B. Final Action

1. Title V Operating Permit Programs

EPA is promulgating interim approval of the operating permit program submitted by the Tennessee Department of Environment and Conservation on November 10, 1994, and supplemented on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, February 13, 1996, April 9, 1996, June 4, 1996, June 12, 1996, July 3, 1996, and July 15, 1996. EPA is also promulgating interim approval of the title V program submitted by the Memphis-Shelby County Health Department on June 26, 1995, and supplemented on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, February 14, 1996, March 5, 1996, and April 10, 1996. The following changes must be made for full approval of the State and County programs.

a. Opt-in Provision for Exempted Sources

Neither the State or the County program addressed 40 CFR 70.3(b)(3), which allows exempted sources to apply for a permit. Justification of the omission of this part 70 provision is requested from the State and the County.

b. Certification of Compliance With Applicable Requirements

The County must clarify in a supplemental legal opinion that the County's permitting program requires a source submitting an application for a title V permit to certify its compliance status with regards to all applicable requirements. In the alternative, the County regulations could be revised to directly incorporate this requirement.

c. Insignificant Activities

The State and the County must complete the following:

i. Remove the exemption from permitting requirements contained in Subparagraph 1200–3–9–.04(5)(f).

ii. Revise subparagraph 1200–3–9–.04(5) to specify, consistent with 40 CFR 70.5(c), that the application may not omit information needed to evaluate the fee amount required.

iii. Revise Subparagraph 1200–3–9–.04(5)(c)(3) to eliminate the exemption from the certification requirements of 40 CFR 70.6(c) and to allow the permitting authority to require additional monitoring, recordkeeping, and reporting, as necessary, for sources subject to generally applicable SIP requirements.

iv. Address EPA's concerns, as discussed in the TSD, about potential conflicts of certain activities and emission units, listed in Paragraph 1200–3–9–.04(5), with applicable requirements.

v. Provide a description of the activities and emission units, and their associated emissions, listed in subparagraphs 1200–3–9–.04(5)(f) and (g), sufficient to allow EPA to determine that exclusion of the activities and units from permit applications will not interfere with the determination and imposition of applicable requirements and collection of fees. In the alternative, the State and the County could specifically limit or ''cap'' the emissions from the listed activities and emissions units to levels that are insignificant compared to the level of emissions that are required to be permitted or subject to applicable requirements.

vi. Subparagraph 1200–3–9–.04(5)(h) must be revised, consistent with the criteria in 40 CFR 70.7 for administrative permit amendments and permit modifications, to eliminate the provisions that would exempt certain emission increases from permit amendment and modification requirements.

d. Applicable Federal Requirements

Subparagraph 1200–3–9–.02(11)(b) in the State and County programs restricts the domain of Federal requirements referenced in paragraph 1200–3–9–.02(11) to those in effect on December 15, 1993. Subparagraph 1200–3–9–.02(11)(b) must be revised, consistent with part 70.6(a), to ensure that title V permits address all applicable requirements.

e. General Permits

Subparagraph 1200–3–9–.02(11)(e)4, which provides for the issuance of general permits, allows a source to operate without a title V permit and not be subject to enforcement action. This provision must be revised in both the State and County programs to be consistent with the requirements of 40 CFR 70.6(d)(1).

f. Excess Emissions Due to Malfunction, Startup, and Shutdown

The State must revise Chapter 1200–3–20 to make clear that it applies only to requirements in the Tennessee SIP. The revised rule must be submitted to EPA for approval in the SIP.

g. Permit Reopenings

Subparagraph 1200–3–31–.04(1)(a) must be revised in both the State and County programs to be consistent with the permit reopening requirements in 40 CFR 70.7(f)(1)(i), which requires completion of permit reopenings not later than 18 months after promulgation of a new applicable requirement in cases of permits with remaining permit terms of three or more years.

h. Use of Title V Fees

Memphis-Shelby County's fee provisions allow for use of operating permit fees for any purpose rather than solely for the funding of title V program activities, as required by 40 CFR 70.9(a). In addition, the County's program does not specify that the fees used to cover the direct and indirect costs of the operating permit program will be collected only from part 70 sources, as required by 40 CFR 70.9(a). Memphis-Shelby County, therefore, must revise its fee provisions to be consistent with the 40 CFR 70.9(a).

i. Conflict of Interest

The State must adopt regulations, which at a minimum, satisfy the provisions of section 128 and 129(e) of the Act.

The scope of the State and County's title V programs approved in this notice applies to all part 70 sources (as defined in the approved programs) within the ninety-one counties under the State's jurisdiction and in Shelby County, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (November 9, 1994).[6]

This interim approval extends until August 31, 1998. During this interim approval period, the State of Tennessee and Memphis-Shelby County are protected from sanctions for failure to have a program, and EPA is not obligated to promulgate, administer, and enforce Federal operating permit programs in the State or the County. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins

[6] The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

upon the effective date of this final interim approval, as does the three-year time period for processing the initial permit applications.

If the State or the County fail to submit complete corrective programs for full approval by March 2, 1998, EPA will start an 18-month clock for mandatory sanctions. If the State or the County fail to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State or the County has corrected the deficiency. If EPA disapproves the State or County corrective programs, and has not granted full approval within 18 months after the disapproval, the EPA must impose mandatory sanctions. In both cases, if the State or County has not come into compliance within 6 months after EPA applies the first sanction, a second sanction is required. In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period. If EPA has not granted full approval to an operating permit program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal operating permit program for that State or County.

2. Implementation of Section 112(g) During Transition Period

EPA is approving the use of the State of Tennessee and Memphis-Shelby County Chapter 1200–3–31 as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by the State and County of rules specifically designed to implement section 112(g). This action does not approve Chapter 1200–3–31, in general, for purposes of 112(g), nor does it imply that Chapter 112(g) will be consistent with the final Federal 112(g) rule, when it is promulgated. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State and the County to adopt regulations consistent with the Federal requirements. This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State or local regulations are adopted.

3. Program for Delegation of Section 112 Standards as Promulgated

The requirements for title V program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of an operating permit program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that operating permit programs contain adequate authorities, adequate resources for implementation, and expeditious compliance schedules, which are also requirements under part 70. Therefore, EPA is also approving, under section 112(l)(5) and 40 CFR 63.91, the State of Tennessee and Memphis-Shelby County programs for receiving delegation of section 112 standards and programs that are unchanged from the Federal rules as promulgated. In addition, EPA is delegating to the State and the County all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[7]

III. Administrative Requirements

A. Docket

Copies of the State of Tennessee and Memphis-Shelby County submittals and other information relied upon for the final interim approval, including the comment letters received and reviewed by EPA on the proposal notice and EPA's response to these comments, are contained in the dockets numbered TN–96–01 and TN–MEMP–96–01 that are maintained at the EPA Region 4 office. The dockets are organized and complete files of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The dockets are available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

[7] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the final interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APAA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: July 16, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraphs (a) and (e) to the entry for Tennessee to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Tennessee

(a) Tennessee Department of Environment and Conservation: submitted on November 10, 1994, and supplemented on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, February 13, 1996, April 9, 1996, June 4, 1996, June 12, 1996, July 3, 1996, and July 15, 1996; interim approval effective on August 28, 1996; interim approval expires August 31, 1998.

* * * * *

(e) Memphis-Shelby County Health Department: submitted on June 26, 1995, and supplemented on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, February 14, 1996, March 5, 1996, and April 10, 1996; interim approval effective on August 28, 1996; interim approval expires August 31, 1998.

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[FR Doc. 96–19091 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[AZR91–0003; FRL–5543–6]

Clean Air Act Reclassification; Arizona-Phoenix Area; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document EPA is making a final finding that the Phoenix nonattainment area (Maricopa County, Arizona) has not attained the carbon monoxide (CO) national ambient air quality standards (NAAQS) by the applicable attainment date in the Clean Air Act (CAA) for moderate CO nonattainment areas, December 31, 1995. This finding is based on EPA's review of CO ambient air quality data. As a result of this finding, the Phoenix area is reclassified as a serious CO nonattainment area by operation of law. The intended effect of the reclassification is to allow the State 18 months from the effective date of this action to submit a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practical but no later than December 31, 2000, the CAA attainment date for serious areas.

EFFECTIVE DATE: This action is effective on August 28, 1996.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Mobile Sources Section, A–2–1, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation, Classification and Reclassification

The Clean Air Act Amendments of 1990 (CAA) were enacted on November 15, 1990. Under section 107(d)(1)(C) of the CAA, each carbon monoxide (CO) area designated nonattainment prior to enactment of the 1990 Amendments, such as the Phoenix Area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the Act, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either ''moderate'' or ''serious'' depending on the severity of the area's air quality problem. The Maricopa Area was classified as moderate. 40 CFR 81.303. Moderate CO nonattainment areas were required to attain the CO national ambient air quality standards (NAAQS) as expeditiously as practicable but no later than December 31, 1995.

EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, of determining, within six months of the applicable attainment date, whether the Phoenix area has attained the CO NAAQS. Under section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to section 186(b)(2)(B) of the Act, EPA must publish a document in the Federal Register identifying areas which failed to attain the standard and therefore must be reclassified as serious by operation of law. EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.

EPA has promulgated two NAAQS for CO: an 8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard in the Phoenix area in 1994 and 1995, this document addresses only the air quality status of the area with respect to the 8-hour standard.

The reader should consult EPA's Notice of Proposed Rulemaking (NPRM) for this action for a more detailed discussion of the applicable CAA requirements, and EPA guidance on those requirements and on the method of calculating CO NAAQS violations for reclassification purposes. See 61 FR 21415 (May 10, 1996).

B. Effect of Reclassification

CO nonattainment areas reclassified as serious are required to submit, within 18 months of the area's reclassification, SIP revisions providing for attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. In addition, the State must submit a SIP revision that includes: (1) a forecast of vehicle miles travelled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Finally, upon the effective date of this reclassification, contingency measures in the moderate area plan for the Phoenix area must be implemented.

C. Proposed Finding of Failure to Attain

On May 10, 1996 EPA proposed to find that the Phoenix area had failed to attain the CO NAAQS by the applicable attainment date. 61 FR 21415. This proposed finding was based on CO monitoring data collected by Maricopa County Environmental Services Department during the years 1994 and 1995. These data demonstrate violations of the CO NAAQS in both years. For the specific data considered by EPA in making this proposed finding, see 61 FR 21415.

II. Response To Comments on Proposed Finding

During the public comment period on EPA's proposed finding, the Agency received a comment only from the Arizona Department of Environmental Quality (ADEQ). ADEQ expressed its